

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
8

9 UNITED STATES OF AMERICA,

No. CR S-94-0390-LKK-CMK
CIV S-04-2563-LKK-CMK

10 Respondent,

11 vs.

FINDINGS AND RECOMMENDATIONS

12 ANTHONY L. NAVARRO,

13 Movant.
14 _____/

15 Movant, a federal prisoner proceeding pro se, has filed this motion pursuant to 28
16 U.S.C. § 2255. On December 12, 2005, the court issued findings and recommendations granting
17 respondent's motion to dismiss. Specifically, the court found that, because movant challenges
18 the manner in which his sentences is being executed, as opposed to the legality of the underlying
19 conviction and/or sentence, the matter should have been filed pursuant to 28 U.S.C. § 2241. On
20 January 31, 2006, the findings and recommendations were adopted with one modification.
21 Rather than dismissal without prejudice and with leave to file a new § 2241 action, the court
22 dismissed with leave to amend the instant action to conform to § 2241. Movant was directed to
23 file an amended pleading within 30 days. To date, movant has failed to comply. The docket
24 reflects that both the December 12, 2005, findings and recommendations and January 31, 2006,
25 order were returned as undeliverable.

26 The court must weigh five factors before imposing the harsh sanction of

1 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
2 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
3 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
4 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
5 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
6 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
7 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
8 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
9 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
10 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
11 comply with an order to file an amended complaint, see Ferdik v. Bonzelet, 963 F.2d 1258,
12 1260-61 (9th Cir. 1992), and failure to inform the district court and parties of a change of
13 address pursuant to local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per
14 curiam).

15 Having considered these factors, and in light of movant's failure to file an
16 amended pleading as directed by the court and movant's failure to keep the court apprised of his
17 current address, the court finds that dismissal of this action is appropriate.

18 Based on the foregoing, the undersigned recommends that:

19 1. This action be dismissed, without prejudice, for lack of prosecution and
20 failure to comply with court rules and orders; and

21 2. The Clerk of the Court is directed to enter judgment and close companion
22 civil case no. CIV S-04-2563-LKK-CMK.

23 ///

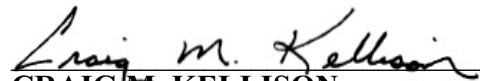
24 ///

25 ///

26 ///

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Failure to file objections within the specified time may waive
6 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7
8 DATED: November 30, 2006.

9
10 
11 **CRAIG M. KELLISON**
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26